

BOARD OF APPEALS CASE NO. 5055

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BEFORE THE

APPLICANT: Paul Linthicum

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to store a
commercial vehicle in the Agricultural District;
2626 Winters Run Road, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/13/00 & 9/20/00

HEARING DATE: October 16, 2000

Record: 9/15/00 & 9/22/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Paul Linthicum, is seeking a special exception pursuant to Section 267-53D(1) of the Harford County Code, to allow storage of a commercial vehicle in an AG/Agricultural District.

The subject parcel is located at 2626 Winters Run Road and is more particularly identified on Tax Map 61, Grid 3D, Parcel 314, Lot 6. The parcel consists of 9.75 acres, is zoned AG/Agricultural and is entirely within the First Election District.

The Applicant appeared and testified that he is an owner/operator of a commercial dump truck. He wants to keep the truck on his personal property where he resides with his family. The lot is 9.75 acres and the truck will be kept in an enclosed steel building, entirely screened from view. The building itself is 25ft by 40 feet by 16 feet high and is a universal steel building. The Applicant does plan to conduct minor maintenance on the vehicle at this location. The Applicant indicated that his normal work hours are 6:00 a.m. to 4:00-5:00 p.m. Sometimes he works on Saturday. The Applicant pointed out that a number of his neighbors have commercial vehicles parked on their property as well. The Applicant did not feel that his use on his property would have any impacts greater than somebody else's use of a dump truck on any other AG zoned property.

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The Department of Planning and Zoning (Department) recommends approval of the request. In recommending approval, the Department stated that the Applicant meets or exceeds all requirements of the Code. Additionally, Mr. Anthony McClune, on behalf of the Department stated that there is no reason to believe that the proposal will have any adverse impacts on any neighboring properties.

There were no protestants who appeared in opposition to the application.

CONCLUSION:

The Applicant is requesting a special exception pursuant to Section 267-53D(1) which provides:

“Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:

- (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
- (c) A minimum parcel area of two (2) acres shall be provided.”

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

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Section 267-52 provides:

“General regulations.

- A. Special exceptions require the approval of the Board in accordance with §267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

The Hearing Examiner finds that the Applicant can meet or exceed all of the requirements of the Code. The property is larger than the 2 acres required; the truck will be stored in an enclosed building fully screened from view of adjacent residential lots and public roads and there are no sales or service contemplated.

Having met the explicit requirements of the Code the Applicant’s request must be considered in light of cases that have addressed the special exception request. In Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), the Maryland Court of Appeals stated the applicable standards for judicial review of the grant or denial of a special exception use as follows:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general

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neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

“Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted.) These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (emphasis in original) 291 Md. at 11-12, 432 A.2d at 1325.

The Court of Appeals established the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. at 15, 432 A.2d at 1327.

See also Deen v. Baltimore Gas & Elec. Co., 240 Md. 317, 214 A.2d 146 (1965).

Based on the testimony of the witnesses and the facts presented by the Department of Planning and Zoning, the Hearing Examiner concludes that the Applicant’s proposed use on this parcel will not have any greater adverse impact than a similar use on another AG parcel. Having met the strict requirements of the Code, the Applicant has carried his burden of proof, therefore the Hearing Examiner recommends approval of the request subject to the following conditions:

1. The Applicant shall construct the building described in his testimony and store the truck inside the building at all times.

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2. Only minor repairs and service are to be conducted on this parcel.
3. This approval is restricted to one dump truck only and does not extend to other vehicles. If the Applicant wishes to store new or additional vehicles he must reapply for special exception use. This condition does not apply if the Applicant simply replaces the current truck with another truck at some later date.
4. The Applicant shall prepare and submit to the Department of Planning and Zoning for their review and approval, a detailed site plan showing the storage location, building and landscaping.
5. This approval extends to the Applicant only and is not transferable with the parcel or in any other manner.

Date NOVEMBER 17, 2000

**William F. Casey
Zoning Hearing Examiner**